



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2021-0653; FRL-9072-01-OW]

### Notification of Receipt of Safe Drinking Water Act (SDWA) Section 1441 Application

#### Submissions for FY21

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing receipt of Certification of Need applications pursuant to the Safe Drinking Water Act (SDWA) Section 1441. Three public water systems (PWSs) and one publicly owned treatment works (POTW) submitted these applications. See the **SUPPLEMENTARY INFORMATION** section of this document for their specific concerns about the unavailability of treatment chemical(s) via normal procurement channels. EPA is providing an opportunity for written comments from the public on these SDWA Section 1441 applications, from chemical producers and repackagers that could supply the required liquid oxygen, sulfur dioxide, clarifloc SE- 1371, clarifloc SE 1482, gaseous chlorine, and sodium hypochlorite to the applicants, and from any other interested parties. The applications are available in the docket.

**DATES:** Comments must be received on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by Docket ID Number EPA-HQ-OW-2021-0653, by any of the following methods:

*Federal eRulemaking Portal:* <https://www.regulations.gov> (our preferred method).

Follow the online instructions for submitting comments.

Mail: U.S. Environmental Protection Agency, EPA Docket Center, Water Docket,  
Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Ave. NW,  
Washington, D.C. 20460.

Hand Delivery / Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, D.C. 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except federal holidays).

*Instructions:* All submissions received must include the Docket ID No. EPA-HQ-OW-2021-0653 for this announcement. Comments received may be posted without change to <https://www.regulations.gov> including any personal information provided. For detailed instructions on sending comments, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this announcement. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be delay in processing mail. Hand deliveries and couriers may be received by scheduled appointment only. For further information of EPA Docket Center Services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** For information on SDWA Section 1441 applications contact Gabrielle Minton, Office of Ground Water and Drinking Water, Water Security Division, at (202) 564-8284 or e-mail [minton.gabrielle@epa.gov](mailto:minton.gabrielle@epa.gov). For information on water utility disinfection products contact Steve Allgeier, Office of Ground Water and Drinking Water, Water Security Division, at (513) 569-7131 or email [allgeier.steve@epa.gov](mailto:allgeier.steve@epa.gov). For more information, visit EPA's website at:

<https://www.epa.gov/waterutilityresponse/watersectorsupplychainchemicalshortages>.

## **SUPPLEMENTARY INFORMATION:**

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### **I. General Information**

#### *A. System's Report of Need*

Two PWSs that submitted Certification of Need applications pursuant to the Safe Drinking Water Act (SDWA) Section 1441 cited receipt of notifications of *force majeure* or unavailability of treatment chemicals via normal procurement channels. The *force majeure* notices were issued due to competing demand for liquid oxygen at hospitals for high-flow oxygen therapy for COVID-19 patients. Additionally, limited or non-cost-effective transportation resources or options have hampered their ability to bring in liquid oxygen from production facilities outside of the region. The applications further stated that after receiving the notices, each of these utilities contacted several additional liquid oxygen suppliers in the region and were informed that none had product that was not already allocated to critical customers, primarily for medical use. These drinking water systems rely on liquid oxygen to produce ozone that is used to disinfect the water, a step necessary to produce safe drinking water as required under the Safe Drinking Water Act and its implementing regulations.

The third PWS and the POTW, operated by the same municipality, have not received *force majeure* notices and have not been placed on reduced allocation at the time the application was submitted. They based their applications for Certifications of Need on concerns regarding limited supply and increased demand on the specified treatment chemicals, as well as ongoing transportation and logistics challenges. The chemicals listed in the applications from this

municipality included: sulfur dioxide, clarifloc SE- 1371, clarifloc SE 1482, gaseous chlorine, and sodium hypochlorite.

*B. Does this Action Impose Any Requirements on Public Water Systems or Public Treatment Works?*

This action, when published, will not impose any requirements on regulated entities.

*C. Public Participation*

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2021-0653, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section of this announcement. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

*D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

Explain your views as clearly as possible.

Describe any assumptions that you used.

Provide any technical information and/or data you used that support your views.

Provide full references for any peer reviewed publication you used that support your views.

Provide specific examples to illustrate your concerns.

Offer alternatives.

Make sure to submit your comments by the comment period deadline. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and *Federal Register* citation related to your comments.

**II. Purpose, Background, and Statutory Requirements of this Action**

This section briefly summarizes the purpose of this action and the statutory requirements.

*A. What is the Purpose of This Action?*

The purpose of this action is to provide notification of the applications received under SDWA Section 1441 and to allow the public to comment on them.

*B. Background and Statutory Requirements*

Pursuant to SDWA Section 1441, a PWS or POTW may submit an application to the EPA Administrator for a Certification of Need when the amount of a “chemical or

substance necessary to effectively treat water is not reasonably available” or “will not be so available when required.” 42 U.S.C. 300j(a). Upon receipt of the application, EPA must publish an announcement in the *Federal Register*, notify in writing all individuals who could be subject to an order based on the Certification of Need, and provide time for written comment. EPA may waive such requirements when EPA finds for good cause that a waiver is necessary to protect public health. *Id.* at (b)(2). Within 30 days after publishing the announcement in the *Federal Register* or after receipt of the application, if publication is waived, EPA will either issue or deny the Certification of Need. *Id.* at (b)(3). The EPA Administrator has delegated the authority to receive applications for Certifications of Need, issue such certifications, and take other actions under SDWA Section 1441 to the EPA Assistant Administrator for Water.

If EPA issues the certification, the agency will forward it to the Department of Commerce for implementation. 42 U.S.C. 300j(c)(1). Within seven days of EPA issuing the certification, the Department of Commerce will issue an order requiring the manufacturers, producers, processors, distributors, or repackagers of the chemical or substance identified, in the amount and form, per the Certification of Need, that the Department determines to be necessary and appropriate. *Id.* Persons or companies subject to the order will be given a reasonable opportunity to consult with the Department of Commerce with respect to implementation of the order. *Id.*

### *C. Summary of Applications*

EPA has received applications for Certifications of Need, under SDWA Section 1441 authority, from the following public water systems and publicly owned treatment works: Tampa Bay Water (PWSID FL6296139), Regional Surface Water Treatment Plant submitted an application for 99.9% liquid oxygen, 487 tons per month with 5 deliveries per week; City of Tampa (PWSID FL6290327), David L. Tippin Water Treatment Facility submitted an application for 99.9% liquid oxygen, 620 tons per month with daily deliveries; Pinellas County,

South Cross Bayou Advanced Water Reclamation Facility (POTW ID FL0040436) submitted an application for Clarifloc SE-1371, 1,100 gallons per month, Clarifloc SE-1482, 11,000 pounds per month, 12.5% Sodium Hypochlorite, 835 gallons per month, Sulfur Dioxide Liquified Gas, 8 tons per month, 100% Gaseous Chlorine, 34 one-ton cylinders per month; and Pinellas County, S.K. Keller Water Treatment Facility (PWSID FL6521405), 12.5% Sodium Hypochlorite, 70,500 gallons per month.

Submitted applications were reviewed by EPA for accuracy, completeness, and basis for need. After the comment period, EPA will determine whether to issue Certifications of Need for each distinct application. If issued, EPA will transmit the certifications to the Department of Commerce Bureau of Industry and Security to implement the certification by issuing an order to contracted suppliers. The orders will require repackagers and/or suppliers to provide the fully contracted chemical allocations to the applicants listed in this *Federal Register* announcement. EPA requests comment on the application submittals as well as feedback from repackagers or suppliers who may be able to assist.

Tampa Bay Water indicates that if they do not have adequate supply of liquid oxygen to operate their ozonation process, they will need to shut down their surface water treatment plant. They can partially offset the loss of the surface water treatment plant production with increased production from groundwater sources. However, the system seeks to resume operation of its normal disinfection process as soon as possible.

The City of Tampa has temporarily switched their primary disinfection from ozonation to chlorination, using sodium hypochlorite. However, according to the City of Tampa, this alteration in treatment makes it challenging to meet other water quality objectives, potentially including compliance with other drinking water standards. Furthermore, the supply of chlorine and sodium hypochlorite is strained in multiple regions of the country, making this emergency solution tenuous.

Upon receipt of the applications from City of Tampa and Tampa Bay Water for Certifications of Need regarding liquid oxygen, EPA contacted their supplier, Matheson Tri-Gas, and was informed by the supplier that the increased demand on liquid oxygen is largely due to the increase in COVID-related hospitalizations and limited and non-cost-effective transportation options, which were the primary factors leading to issuance of force majeure. On August 27, 2021, EPA met with representatives from the Department of Homeland Security, the Sector Risk Management Agency for the Chemical Sector, and representatives from several major producers of liquid oxygen to discuss the risk of cascading impacts should water systems, which depend on a reliable supply of liquid oxygen to produce safe drinking water or treat wastewater, not receive the necessary allocations. As a result, the Chemical Sector Coordinating Council sent a notice to all major domestic liquid oxygen producers requesting that they coordinate with their water sector customers to ensure that adequate supplies of liquid oxygen are delivered to those water sector customers to maintain production of safe drinking water and treatment of wastewater.

#### *D. Additional Background*

EPA is also aware that several other water systems that have not submitted applications for a Certification of Need as of the date of this announcement have received force majeure notices and have been placed on reduced allocations, in some cases 0% of the contracted amount. Furthermore, EPA has been informed by suppliers that all non-critical customers of liquid oxygen have been issued force majeure notices and placed on reduced allocation in order to preserve available supplies for medical use and critical infrastructure customers. In some cases, these industrial customers include manufacturers of other treatment chemicals, such as ferric sulfate, and thus, could result in shortages of other water treatment chemicals critical to the provision of safe drinking water and treatment of wastewater. All suppliers have reported significant challenges due to an inadequate number of qualified drivers with the necessary endorsements and experience to transport and offload liquified oxygen, as well as a limited fleet of cryogenic trucks that are necessary to transport liquid oxygen. EPA continues to work with



our federal partners and suppliers to identify actions that can be taken to increase the availability of liquid oxygen to all critical customers.

Pinellas County indicated that if they do not receive a sufficient and reliable supply of the required treatment chemicals used at their drinking water treatment facility, they would not be able to ensure safe drinking water to the communities they serve and may need to shut down their water treatment plant. Under normal circumstances, they could rely on other sources of water from Tampa Bay Water, such as Tampa Bay Water's wellfield. However, Tampa Bay Water is currently in the process of assessing and potentially utilizing their backup sources, which, in turn, would make them unavailable to Pinellas County Utilities. Pinellas County also indicated that if they did not receive a sufficient and reliable supply of the required treatment chemicals to their reclamation facility, they would not have the ability to disinfect the effluent. Pinellas County asserts that this scenario would force the facility to discontinue reclaimed uses of the effluent for irrigation and to discharge water that has not been properly disinfected, leading to a violation of their discharge permit. Additionally, the lack of available irrigation water would put additional burden on the drinking water supply for irrigation purposes. According to Penallas County, exhausting its supplies of sulfur dioxide, specifically, would render the facility unable to dechlorinate plant effluent. In order to discharge plant effluent to local waterbodies, effluent must be properly dechlorinated or the facility will be in violation of their discharge permit. This scenario is of concern particularly during the rainy season and at times with heavy influent. Further, if Pinellas County were to exhaust its supplies of Clarifloc SE-1482 and Clarifloc SE-1371, the facility asserts that it would not have the proper polymers needed for effective sludge thickening and dewatering, causing a backup of solids and treatment and potentially leading to septic conditions with subsequent sludge storage overflow, which could harm the surrounding environment.

At the time of application, Pinellas County had not received a force majeure notice or been placed on reduced allocation. However, given the shortage of related treatment chemicals in

the region and the vulnerability in the system's backup supplies, Pinellas County is concerned that there is a risk that they could face a shortage of one or more of the listed chemicals.

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